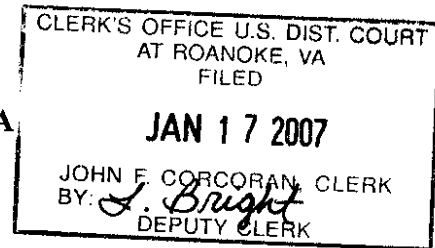


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION



UNITED STATES OF AMERICA,

v.

JOHN L. IRBY

Defendant

Criminal Number: 7:06CR00087

MEMORANDUM OPINION AND ORDER

By: Samuel G. Wilson

United States District Judge

The United States Magistrate Judge found appellant, John L. Irby, guilty of causing a disturbance at the Department of Veterans Affairs Medical Center ("the Center") in Salem, Virginia, in violation of 38 C.F.R. § 1.218(a)(5). At trial, Irby moved for judgement of acquittal under Rule 29 of the Federal Rules of Criminal Procedure, arguing that the prosecution failed to present any evidence that the regulation he was charged with violating was conspicuously posted at the Center, as required by 38 U.S.C.S. § 901(d) and 38 C.F.R. § 1.218(a), and that proof of conspicuous posting was an element of the offense. In a written opinion the magistrate judge concluded that the "conspicuous posting" requirement is at best an affirmative defense, and denied Irby's motion and found him guilty. Irby appealed pursuant to Federal Rule of Criminal Procedure 58(g)(2), the court heard oral argument, and the court now affirms on the reasoning of the Magistrate Judge.

Accordingly, it is **ORDERED** and **ADJUDGED** that the judgement of conviction is **AFFIRMED**.

ENTER: January 17, 2007.

A handwritten signature in black ink, appearing to be "S. Wilson", written over a horizontal line.

UNITED STATES DISTRICT JUDGE